ALLEN & OVERY

Global Overview and European Regulations

"Life After EU RoHS"

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Outline

- RoHS Directive and Copycats
- EU RoHS Gap Analysis
- REACH Regime
- EuP Directive

Compliance Objectives

- Lots of moving parts, new issues and limited guidance
  - Judgment calls & “business decisions”
  - Fact-specific application to each company (and sometimes divisions or businesses within each company)
- Work through compliance/legal team
- Last-minute changes may not be feasible or appropriate
- BUT compliance strategy will continue to evolve
  - Seek appropriate balance between over-compliance and under-compliance
  - Consider aggressive-leaning or conservative-leaning approaches/interpretations, depending on situation
  - Consider challenge of maintaining consistency

Notice

This Presentation is for General Guidance Only and Does Not Contain Definitive Advice

Section 1

RoHS Directive and Copycats

Overview: Global RoHS Trends

- 25 EU Member States
- Switzerland
- 3 EEA countries: Iceland, Norway and Liechtenstein
- 2 accession countries: Bulgaria and Romania
- Turkish RoHS
- RoHS in Asia: China, Japan, Korea
- California RoHS + other US

EU + 4

- 25 EU Member States
  - All have implemented RoHS, most have implemented WEEE
- Switzerland
  - Not part of EU, but has laws almost identical to EU WEEE and RoHS
  - “Domestic market” application
  - Maximum concentration values have not been officially adopted
- European Economic Area (EEA) countries
  - Iceland, Norway and Liechtenstein
  - Same as EU WEEE and RoHS
  - “EU + EEA market” application

EU Accession Countries

- Bulgaria and Romania are due to accede to the EU in 2007
- Will need to implement WEEE and RoHS by then, but may ask for derogations if they don't have infrastructure in place
- Bulgarian RoHS already adopted and set to take effect January 1, 2007
- Romanian WEEE registration deadline was April 30, 2006

Turkish RoHS

- Issued May 13, 2006 in Official Gazette
- Requires related regulations to be issued in the future
- Regulations are under preparation and will most likely grant a 1 - 2 year transition period

China RoHS

- China's Ministry of Information Industry (MII) drafted "Management Methods for Controlling Pollution Caused by Electronic Information Products," referred to as "China RoHS"
- China RoHS is an "enabling law" – simply the first step in the rulemaking process
- Two sets of requirements
  - Labeling and information disclosure (broad scope)
    - March 1, 2007
  - Substance restrictions, verified by compulsory pre-market testing and certification (narrower scope at first)
    - Dates TBD

China RoHS vs. EU RoHS

- Similarities
  - "Electronic Information Product" broadly defined
  - Substance ban (same six substances)
- Differences
  - Additional and different requirements
    - All EIPs
      - Labeling: marking, disclosure and packaging
    - Products listed in the "Catalog" (a subset of EIPs)
      - All of the above + substance ban + pre-market certification
  - Rolling implementation dates

Japan RoHS

- No substance restriction—only labeling and reporting
  - Same six substances of concern
  - Personal computers (CRT & LCD), unit-type air conditioners, televisions, microwave ovens, clothes dryers, electric refrigerators, electric washing machines and copying machines
- Implementation: July 2006
- JIS Standard C0950 will be mandatory
  - Gives specific guidance on the new labeling and reporting requirements

Korea RoHS

- Korea is considering a RoHS type ban
  - Bill (under consideration) incorporates aspects of WEEE, RoHS and EuP
- Proposed implementation: July 2007
- Product scope: electronic products operated by electricity and magnetic fields, and automotives
- Substance scope
  - Six RoHS substances will be banned and companies will need self-declarations complying with the law
- Exemptions from EU RoHS are expected to be applicable in Korea

Section 2

EU RoHS Gap Analysis

3 Different Sales Restrictions

- Selling refurbished and repaired EEE
  - "Reuse" of EEE that was POTM in EU before July 1 is exempted, but not sale of "as new" products
- Swapping "spare parts"
  - Rule of thumb: A "part" is a product that is physically inserted into a bigger piece of equipment (board)
  - If you are sending a non-RoHS compliant "spare part," it must be for EEE that is grandfathered (POTM in EU before July 1, 2006)
- Swapping "whole units"
  - According to verbal guidance from Commission, "spare part" exemption does not apply to "whole unit" exchanges
  - Rule of thumb, but some are taking a different view

Obtain MDs/CoCs from Suppliers

- Stand-alone CoC/MD may not be enforceable
- Tracking system
- Request updated MDs/CoCs from suppliers (annually and upon product changes)
- Use industry standard to the extent possible
- Review contracts with suppliers
  - RoHS compliance representation
  - Indemnity for losses relating to RoHS
  - Right to audit

Establish Testing/Auditing Procedures

- Testing
  - IEC 62321 standard *"Procedures for the determination of six regulated substances in electrotechnical products"* – Currently draft, final release expected March 2007
  - IEC 62321 specifies analytical test methods, but not how to define/isolate "homogeneous materials" for testing. Test results for some electronic materials may be uncertain/inconclusive, particularly when performing testing at finished-product level
  - 3 common testing options:
    - Perform risk-based screening with XRF (can be done internally)
    - Outsource testing to experienced labs
    - Require suppliers to perform testing in supply chain
- Auditing
  - Many possible approaches: Consider adapting existing auditing practices/procedures to RoHS compliance activities

Develop Internal Due Diligence Policy

- UK due diligence defense is only available in the UK (and Poland)
- Blue print for compliance strategy but does not guarantee compliance – minimum
- Suggested Elements
  - Get materials declaration
  - Product marking in supply chain
  - Analysis (testing)
  - Technical dossier (28 days, 4 years)

RoHS Enforcement Guidance

- RoHS compliance documentation
  - Common market surveillance methodology
  - Overall approach based on “presumption of conformity”
- Investigation methodology
  - Targeted XRF analysis
  - Request information from producer
  - Determination whether sufficient evidence of active supply chain RoHS management or of evidence that all homogeneous materials comply
  - May initiate product sampling and testing

Quantify Risk: Fines and Penalties

- Monetary fines
  - Estonia: Maximum EUR 1.5 million
  - France: Maximum EUR 7,500 *per infraction*
  - Spain: Maximum EUR 1.2 million *per infraction*
  - Netherlands and UK: No maximum limit
- Prohibition on sales (Ireland, Finland, Poland)
- Revocation of trade licenses (Czech Republic, Poland, Spain)
- Product recall (Germany, Ireland)
- Imprisonment (in at least 8 jurisdictions, including the Netherlands and Ireland)

Revisit WEEE Compliance

- *Each product has its producer™*
- OEM vs. distributor registration
- Information for consumers
  - Producers must provide certain WEEE information to B2C end users, *e.g.* in the instructions for use or at the point of sale
- Information for treatment facilities
- Registration number
  - Registered companies must state their registration numbers on all purchase orders and invoices
- Producer labeling

Section 3

REACH Regime

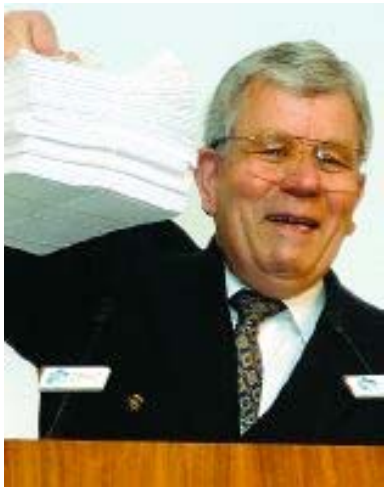
REACH – Background Information

- Draft EU Regulation to establish integrated system for Registration, Evaluation and Authorization of Chemicals
- Aims
  - to simplify the EU chemicals laws
  - to better protect human health and the environment
- Shift of responsibility and costs to the industry
- EU **Regulation**, not Directive like WEEE and RoHS

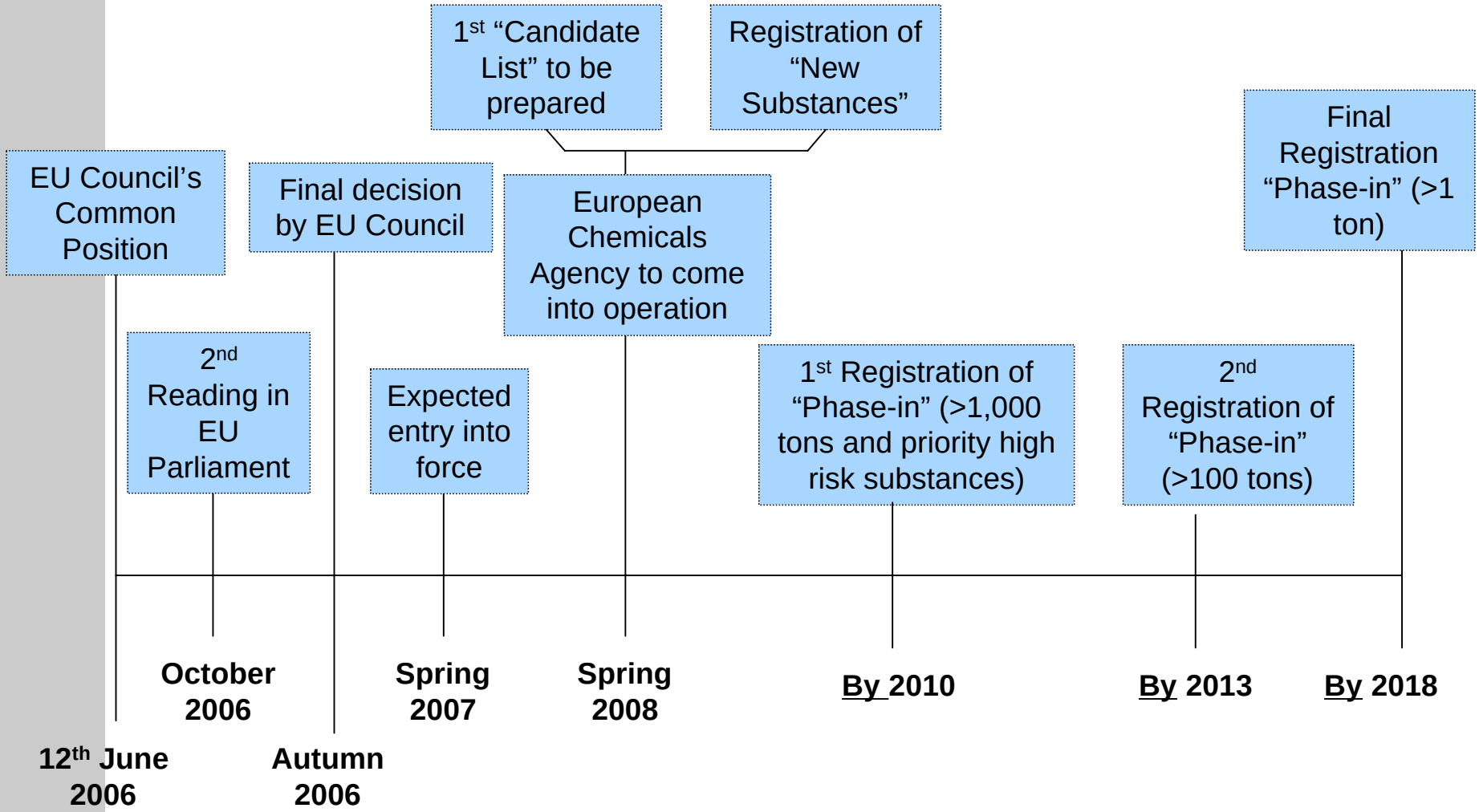
"REACH is one of the largest and most complex pieces of legislation ever attempted by the European Union"

defra
Department for Environment Food and Rural Affairs

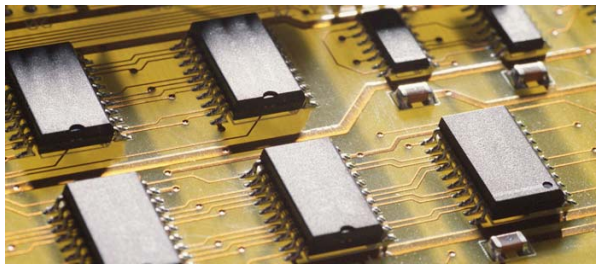
An enthusiastic MEP…



REACH Timeline

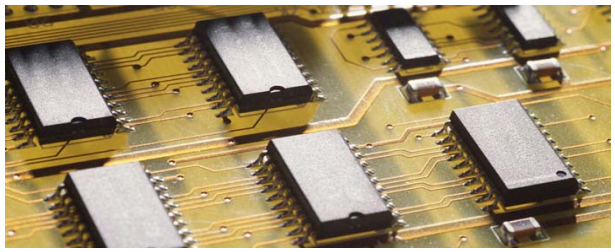


Implications for the U.S. High-Tech Industry (1)



- Companies importing only finished products
  - REACH applies if substances are “intended to be released under normal or reasonably foreseeable conditions of use”
  - Make sure customers have necessary information for safe use of products
  - Distributors must ensure safety information is provided with the substances they sell
  - If subject to registration requirement, register or confirm chemical manufacturer complies and its registration applies to your use

Implications for the U.S. High-Tech Industry (2)



- Manufacturing in Europe
  - Use approved chemical substances
  - Make sure use is consistent with manufacturers' intended use for which tests have been concluded
  - Review contracts with suppliers and customers
  - Downstream users responsible for assessing risks arising from uses not covered by safety data sheet received from their suppliers
  - If not,
    - change supplier or consider alternative substances
    - test and register
    - move operations

REACH Closing thoughts…

- Not yet law – so it may change!
- Key references:
  - Common Position dated June 12, 2006
  - Commission's Q&As dated March 23, 2006
  - The European Chemicals Bureau's webpage (http://ecb.jrc.it/REACH/)

Section 4

EuP Directive

EuP = Framework Directive

- Published in Official Journal July 22, 2005
- A **framework** for setting eco-design requirements for energy using products
- Eco-design standards will be developed on a product-by-product basis
- By July 2007, Commission to establish a 3-year work plan setting forth priority products
- Commission to bring forward proposals for "implementing measures" in the meantime

Implementing Measures

- Will specify:
  - Exact definition of EuPs covered
  - Eco-design requirements
  - Details for conformity assessment
  - Requirements for technical documentation
  - Duration of transitional period
- Stakeholder consultation required
- Industry self regulation could be an alternative to compulsory standards

Eco-Design Standards

- Likely factors for regulation:
  - Consumption of raw materials, energy and resources
  - Emissions to air, water and soil (both during product use and after disposal)
  - Pollution through noise, vibration, radiation, electromagnetic fields
  - Waste material generated at end of life
  - Reuse, recycling and recovery of materials and energy
- CE marking and conformity assessment will apply
- Information requirements for consumers

Criteria for Products to be Covered

- Significant volume of sales and trade: more than 200,000 units/year in the EU
- Significant environmental impact
- Significant potential for improvement without entailing excessive costs
- Means of transport are excluded from scope

More information:
http://ec.europa.eu/enterprise/eco_design/index_en.htm

Thank you

- Questions?